

No. 3098

**United States
Circuit Court of Appeals**
For the Ninth Circuit.

R. R. SIDEBOTHAM and J. G. G. WILMOT,
Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Petition for Rehearing

WELLINGTON D. RANKIN, Esq.,
Attorney for Plaintiff in Error.

B. K. WHEELER, Esq., United States Attorney,
Attorney for Defendant in Error.

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R. R. SIDEBOTHAM and J. G. G. WILMOT,
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vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

PETITION FOR REHEARING.

The plaintiffs in error in the above entitled cause respectfully submit to the court that this is a case wherein they may, with propriety, ask that a rehearing be granted, and to that end they petition therefor upon the following grounds:

I.

Upon the ground that the court, as shown conclusively by its opinion, misread the transcript on page 332, with reference to contention number II of plaintiffs in error that "The Evidence is Insufficient to Support a Conviction under the Sixth Count and therefore the Motions for Directed Verdict Should Have Been Sustained."

On page 6 of the opinion filed September 10, 1918, by the above entitled court the opinion reads:

“The plaintiff in error Sidebotham, *was called as a witness* and identified his signature at the bottom of letter Exhibit No. 98; that No. 97 was the Northwestern Trustee Company’s envelope; stated he had seen Exhibit No. 99 before and it was an application for stock. He didn’t know whether it was gotten out by the Northwestern Trustee Company or by Sidebotham and Wilmot. It was set out by Sidebotham and Wilmot.” Italics ours.

The opinion of the court says that Sidebotham took the witness stand, when as a matter of fact *Sidebotham did not take the stand at all.*

If the statement in the opinion were correct, that Sidebotham took the stand and stated that *the circular was sent out by Sidebotham and Wilmot*, then the contention of plaintiffs in error would be without foundation.

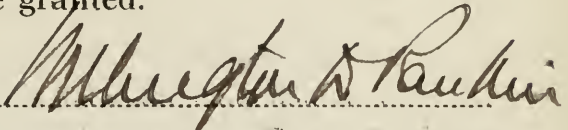
We respectfully submit that the court is completely in error when it assumes that the entire paragraph at the top of page 332 of the transcript is the testimony of R. R. Sidebotham, for, in fact, it is the testimony of J. Hosking.

It was because Sidebotham and Wilmot did not take the stand that contention number V of brief of plaintiffs in error was made, to the effect that the court’s instructions were a comment upon the fact that they did not take the stand.

Without repeating the contention set forth in paragraph II of our brief, we respectfully submit that the inferences that can be drawn from the testimony of J. Hosking are insufficient without

any testimony from Sidebotham to show that the circular letter referred to in the sixth count, (and for which plaintiffs in error were convicted for having sent it through the mail,) was in fact deposited at their direction or with their knowledge.

It is therefore respectfully submitted that a rehearing should be granted.

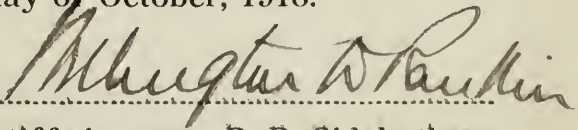


Attorney for plaintiffs in error, R. R. Sidebotham
and J. G. G. Wilmot.

CERTIFICATE.

I, Wellington D. Rankin, attorney for plaintiffs in error R. R. Sidebotham and J. G. G. Wilmot, hereby respectfully certify that in my judgment the petition for a rehearing is well founded, and I further certify that it is not interposed for the purpose of delay.

Dated this 5th day of October, 1918.



Attorney for plaintiffs in error, R. R. Sidebotham
and J. G. G. Wilmot.

Service of the foregoing
Petition for rehearing
and receipt of 3 copies
hereof this 5th day of
October 1918 is hereby
acknowledged and admitted

B.H. Wheeler
U.S. Atty.

J. H. H. Murphy
Asst. U.S. Atty.